



General Assembly

January Session, 2005

***Raised Bill No. 1232***

LCO No. 4188

\*04188\_\_\_\_\_FIN\*

Referred to Committee on Finance, Revenue and Bonding

Introduced by:  
(FIN)

***AN ACT CONCERNING CERTAIN TAXES ADMINISTERED BY THE  
DEPARTMENT OF REVENUE SERVICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 12-285b of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2005*):

4 (a) Every tobacco product manufacturer, as defined in section 4-28h,  
5 selling cigarettes to consumers within this state, whether directly or  
6 through a distributor, dealer, or similar intermediary or  
7 intermediaries, shall secure a cigarette manufacturer's license from the  
8 Commissioner of Revenue Services. Such license shall be renewable  
9 annually. The annual fee for a cigarette manufacturer's license shall be  
10 five thousand dollars. The commissioner shall not include or retain in  
11 the directory of tobacco product manufacturers developed and  
12 maintained in accordance with section 4-28m, as amended by this act,  
13 the name or brand families of any tobacco product manufacturer that  
14 has failed to secure and retain a cigarette manufacturer's license in  
15 accordance with this section.

16 Sec. 2. Subsection (a) of section 4-28m of the general statutes is  
17 repealed and the following is substituted in lieu thereof (*Effective July*  
18 *1, 2005*):

19 (a) (1) Not later than July 1, 2005, the commissioner shall develop  
20 and make available for public inspection, on the Department of  
21 Revenue Services' website and in such other forms as the  
22 commissioner deems appropriate, a directory listing of all tobacco  
23 product manufacturers that have (A) provided current and accurate  
24 certifications conforming to the requirements of section 4-28l and all  
25 brand families that are listed in such certifications, and (B) secured a  
26 cigarette manufacturer's license pursuant to section 12-285b, as  
27 amended by this act. The commissioner shall update the directory as  
28 necessary in order to correct mistakes and to add or remove a tobacco  
29 product manufacturer or brand family to keep the directory current  
30 and in conformity with the requirements of sections 4-28k to 4-28r,  
31 inclusive.

32 (2) The commissioner shall not include or retain in such directory  
33 the name or brand families of any manufacturer (A) that has failed to  
34 provide the required certification, [or] (B) whose certification the  
35 commissioner determines is not in compliance with the provisions of  
36 section 4-28l, unless such violation has been remedied to the  
37 satisfaction of the commissioner, or (C) who has failed to secure or  
38 retain a cigarette manufacturer's license pursuant to section 12-285b, as  
39 amended by this act.

40 (3) The commissioner shall not include or retain in the directory any  
41 brand family of a nonparticipating manufacturer if the commissioner  
42 concludes: (A) All escrow payments required pursuant to the  
43 provisions of sections 4-28h to 4-28j, inclusive, for any period for any  
44 brand family, whether or not listed by such nonparticipating  
45 manufacturer, have not been fully paid into a qualified escrow fund  
46 governed by a qualified escrow agreement that has been approved by  
47 the Attorney General, or (B) any outstanding final judgment, including

48 interest thereon, for a violation of sections 4-28h to 4-28j, inclusive, has  
49 not been fully satisfied for such brand family and such manufacturer.

50 Sec. 3. Subdivision (20) of subsection (a) of section 12-213 of the  
51 general statutes is repealed and the following is substituted in lieu  
52 thereof (*Effective from passage and applicable to taxable years commencing*  
53 *on or after January 1, 2005*):

54 (20) (A) "Carrying on or doing business" means and includes each  
55 and every act, power or privilege exercised or enjoyed in this state, as  
56 an incident to, or by virtue of, the powers and privileges acquired by  
57 the nature of any organization whether the form of existence is  
58 corporate, associate, joint stock company or fiduciary, and includes the  
59 direct or indirect engaging in, transacting or conducting of activity in  
60 this state by an electric supplier, as defined in section 16-1, or  
61 generation entity or affiliate, as defined in section 16-1, for the purpose  
62 of establishing or maintaining a market for the sale of electricity or of  
63 electric generation services, as defined in section 16-1, to end use  
64 customers located in this state through the use of the transmission or  
65 distribution facilities of an electric distribution company, as defined in  
66 section 16-1, or, until unbundled in accordance with section 16-244e,  
67 electric company, as defined in section 16-1;

68 (B) A company that has contracted with a commercial printer for  
69 printing and distribution of printed material shall not be deemed to be  
70 carrying on or doing business in this state because of (i) the ownership  
71 or leasing by that company of tangible or intangible personal property  
72 located at the premises of the commercial printer in this state, (ii) the  
73 sale by that company of property of any kind produced or processed at  
74 and shipped or distributed from the premises of the commercial  
75 printer in this state, (iii) the activities of that company's employees or  
76 agents at the premises of the commercial printer in this state, which  
77 activities relate to quality control, distribution or printing services  
78 performed by the printer, or (iv) the activities of any kind performed  
79 by the commercial printer in this state for or on behalf of that

80 company;

81 (C) A company that participates in a trade show or shows at the  
 82 convention center, as defined in subdivision (3) of section 32-600, shall  
 83 not be deemed to be carrying on or doing business in this state,  
 84 regardless of whether the company has employees or other staff  
 85 present at such trade shows, provided such company's activity at such  
 86 trade shows is limited to displaying goods or promoting services, no  
 87 sales are made, any orders received are sent outside this state for  
 88 acceptance or rejection and are filled from outside this state, and  
 89 provided further that such participation is not more than fourteen  
 90 days, or part thereof, in the aggregate during the company's income  
 91 year for federal income tax purposes.

92 Sec. 4. Section 12-217o of the general statutes is repealed and the  
 93 following is substituted in lieu thereof (*Effective from passage and*  
 94 *applicable to taxable years commencing on or after January 1, 2005*):

95 There shall be allowed as a credit against the tax imposed on any  
 96 corporation under this chapter with respect to any [taxable] income  
 97 year of such corporation commencing on or after January 1, 1997, (1)  
 98 that has more than two hundred fifty full-time, permanent employees  
 99 but not more than eight hundred full-time, permanent employees  
 100 whose wages, salaries or other compensation is paid in this state, as  
 101 the phrase is used in subsection (c) of section 12-218, an amount equal  
 102 to five per cent of the excess of (A) amount spent by the corporation  
 103 during the income year on machinery and equipment acquired for and  
 104 installed in a facility in this state, [which amount exceeds] over (B) the  
 105 amount spent by such corporation during the preceding income year  
 106 of the corporation for such expenditures, whether or not such credit  
 107 was allowed or claimed for such preceding income year, or (2) that has  
 108 not more than two hundred fifty full-time, permanent employees  
 109 whose wages, salaries or other compensation is paid in this state, as  
 110 the phrase is used in subsection (c) of section 12-218, an amount equal  
 111 to ten per cent of the excess of (A) the amount spent by the corporation

112 during the income year on machinery and equipment acquired for and  
 113 installed in a facility in this state, [which amount exceeds] over (B) the  
 114 amount spent by such corporation during the preceding income year  
 115 of the corporation for such expenditures, whether or not such credit  
 116 was allowed or claimed for such preceding income year. [In addition,  
 117 any amount spent (1) by a corporation whose income year, for federal  
 118 income tax purposes, commences on the first day of January, February,  
 119 March, April or May, (2) on machinery and equipment acquired for  
 120 and installed in a facility in this state, (3) during that portion of its  
 121 income year in 1995 that expired on May 31, 1995, shall be deemed to  
 122 have been spent during its income year commencing in 1997 and shall  
 123 be added to any amount actually spent on machinery and equipment  
 124 acquired for and installed in a facility in this state during its income  
 125 year commencing in 1997, provided the credit percentage to which  
 126 such corporation shall be entitled for its income year commencing in  
 127 1997 shall be based on the number of full-time, permanent employees  
 128 during its income year commencing in 1997.]

129 Sec. 5. Subsection (a) of section 12-217w of the general statutes is  
 130 repealed and the following is substituted in lieu thereof (*Effective from*  
 131 *passage and applicable to taxable years commencing on or after January 1,*  
 132 *2005*):

133 (a) For purposes of this section: [, "fixed capital"]

134 (1) "Fixed capital" means tangible personal property which [(1)] (A)  
 135 has a class life, in years, of more than four years, as described in  
 136 Section 168(e) of the Internal Revenue Code of 1986, or any subsequent  
 137 corresponding internal revenue code of the United States, as from time  
 138 to time amended, [(2)] (B) is acquired by purchase from a person other  
 139 than a related person, [(3)] (C) is not acquired to be leased, and is not  
 140 leased, to another person or persons during the twelve full months  
 141 following its acquisition, [and (4)] (D) will be held and used in this  
 142 state by a corporation in the ordinary course of the corporation's trade  
 143 or business in this state for not less than five full years following its

144 acquisition, and (E) commenced its original use with the corporation  
 145 claiming a credit under this section, and no prior use of which has  
 146 been made by any other person. "Fixed capital" does not include  
 147 inventory, land, buildings or structures, or mobile transportation  
 148 property. [With respect to a corporation claiming a credit under this  
 149 section, a "related person" means]

150 (2) "Related person" means, with respect to a corporation claiming a  
 151 credit under this section, a corporation, partnership, association or  
 152 trust controlled by such corporation; an individual, corporation,  
 153 partnership, association or trust that is in control of such corporation; a  
 154 corporation, partnership, association or trust controlled by an  
 155 individual, corporation, partnership, association or trust that is in  
 156 control of such corporation; or a member of the same controlled group  
 157 as such corporation. [For purposes of this section, "control"]

158 (3) "Control", with respect to a corporation, means ownership,  
 159 directly or indirectly, of stock possessing fifty per cent or more of the  
 160 total combined voting power of all classes of the stock of such  
 161 corporation entitled to vote; with respect to a trust, means ownership,  
 162 directly or indirectly, of fifty per cent or more of the beneficial interest  
 163 in the principal or income of such trust. The ownership of stock in a  
 164 corporation, of a capital or profits interest in a partnership or  
 165 association or of a beneficial interest in a trust shall be determined in  
 166 accordance with the rules for constructive ownership of stock  
 167 provided in Section 267(c) of the Internal Revenue Code of 1986, or any  
 168 subsequent corresponding internal revenue code of the United States,  
 169 as from time to time amended, other than Paragraph (3) of such  
 170 section.

171 Sec. 6. Subdivision (15) of subsection (a) of section 12-407 of the  
 172 general statutes is repealed and the following is substituted in lieu  
 173 thereof (*Effective from passage and applicable to taxable years commencing*  
 174 *on or after January 1, 2005*):

175 (15) (A) "Engaged in business in the state" means and includes but

176 shall not be limited to the following acts or methods of transacting  
177 business: (i) Selling in this state, or any activity in this state in  
178 connection with selling in this state, tangible personal property for use,  
179 storage or consumption within the state; (ii) engaging in the transfer  
180 for a consideration of the occupancy of any room or rooms in a hotel or  
181 lodging house for a period of thirty consecutive calendar days or less;  
182 (iii) rendering in this state any service described in any of the  
183 subparagraphs of subdivision (2) of this subsection; (iv) maintaining,  
184 occupying or using, permanently or temporarily, directly or indirectly,  
185 through a subsidiary or agent, by whatever name called, any office,  
186 place of distribution, sales or sample room or place, warehouse or  
187 storage point or other place of business or having any representative,  
188 agent, salesman, canvasser or solicitor operating in this state for the  
189 purpose of selling, delivering or taking orders; (v) notwithstanding the  
190 fact that retail sales are made from outside this state to a destination  
191 within this state and that a place of business is not maintained in this  
192 state, engaging in regular or systematic solicitation of sales of tangible  
193 personal property in this state by the display of advertisements on  
194 billboards or other outdoor advertising in this state, by the distribution  
195 of catalogs, periodicals, advertising flyers or other advertising by  
196 means of print, radio or television media, or by mail, telegraphy,  
197 telephone, computer data base, cable, optic, microwave or other  
198 communication system, for the purpose of effecting retail sales of  
199 tangible personal property, provided one hundred or more retail sales  
200 from outside this state to destinations within this state are made  
201 during the twelve-month period ended on the September thirtieth  
202 immediately preceding the monthly or quarterly period with respect to  
203 which liability for tax under this chapter is determined; (vi) being  
204 owned or controlled, either directly or indirectly, by a retailer engaged  
205 in business in this state which is the same as or similar to the line of  
206 business in which the retailer so owned or controlled is engaged; (vii)  
207 being owned or controlled, either directly or indirectly, by the same  
208 interests that own or control, either directly or indirectly, a retailer  
209 engaged in business in this state which is the same as or similar to the

210 line of business in which the retailer so owned or controlled is  
211 engaged; (viii) being the assignee of a person engaged in the business  
212 of leasing tangible personal property to others, where leased property  
213 of such person is situated within this state and such assignee has a  
214 security interest, as defined in subsection (37) of section 42a-1-201, in  
215 such property; and (ix) notwithstanding the fact that retail sales of  
216 items of tangible personal property are made from outside this state to  
217 a destination within this state and that a place of business is not  
218 maintained in this state, repairing or servicing such items, under a  
219 warranty, in this state, either directly or indirectly through an agent,  
220 independent contractor or subsidiary.

221 (B) A retailer who has contracted with a commercial printer for  
222 printing and distribution of printed material shall not be deemed to be  
223 engaged in business in this state because of the ownership or leasing  
224 by the retailer of tangible or intangible personal property located at the  
225 premises of the commercial printer in this state, the sale by the retailer  
226 of property of any kind produced or processed at and shipped or  
227 distributed from the premises of the commercial printer in this state,  
228 the activities of the retailer's employees or agents at the premises of the  
229 commercial printer in this state, which activities relate to quality  
230 control, distribution or printing services performed by the printer, or  
231 the activities of any kind performed by the commercial printer in this  
232 state for or on behalf of the retailer.

233 (C) A retailer not otherwise a retailer engaged in business in the  
234 state who purchases fulfillment services carried on in this state by a  
235 person other than an affiliated person, or who owns tangible personal  
236 property located on the premises of an unaffiliated person performing  
237 fulfillment services for such retailer shall not be deemed to be engaged  
238 in business in the state. For purposes of this subparagraph, persons are  
239 affiliated persons with respect to each other where one of such persons  
240 has an ownership interest of more than five per cent, whether direct or  
241 indirect, in the other, or where an ownership interest of more than five  
242 per cent, whether direct or indirect, is held in each of such persons by

243 another person or by a group of other persons who are affiliated  
 244 persons with respect to each other. For purposes of this subparagraph,  
 245 "fulfillment services" means services that are performed by a person on  
 246 its premises on behalf of a purchaser of such services and that involve  
 247 the receipt of orders from the purchaser of such services or an agent  
 248 thereof, which orders are to be filled by the person from an inventory  
 249 of products that are offered for sale by the purchaser of such services,  
 250 and the shipment of such orders to customers of the purchaser of such  
 251 services.

252 (D) A retailer not otherwise a retailer engaged in business in this  
 253 state that participates in a trade show or shows at the convention  
 254 center, as defined in subdivision (3) of section 32-600, shall not be  
 255 deemed to be engaged in business in this state, regardless of whether  
 256 the retailer has employees or other staff present at such trade shows,  
 257 provided the retailer's activity at such trade shows is limited to  
 258 displaying goods or promoting services, no sales are made, any orders  
 259 received are sent outside this state for acceptance or rejection and are  
 260 filled from outside this state, and provided further that such  
 261 participation is not more than fourteen days, or part thereof, in the  
 262 aggregate during the retailer's income year for federal income tax  
 263 purposes.

264 Sec. 7. Subdivision (7) of section 12-430 of the general statutes is  
 265 repealed and the following is substituted in lieu thereof (*Effective*  
 266 *October 1, 2005, and applicable to contracts entered into on or after October*  
 267 *1, 2005*):

268 (7) (A) As used in this section, (i) "nonresident contractor" means a  
 269 contractor who does not maintain a regular place of business in this  
 270 state; [and] (ii) "regular place of business" means any bona fide office,  
 271 factory, warehouse or other space in this state at which a  
 272 contractor is doing business in its own name in a regular and  
 273 systematic manner, and which place is continuously maintained,  
 274 occupied, and used by the contractor in carrying on its business

275 through its employees regularly in attendance to carry on the  
 276 contractor's business in the contractor's own name, except that  
 277 "regular place of business" does not include a place of business for a  
 278 statutory agent for service of process, or a temporary office [at the  
 279 site of construction] location used by the contractor only for the  
 280 duration of the contract, whether or not at the site of construction, or  
 281 an office maintained, occupied and used by a person affiliated with  
 282 the contractor; and (iii) "person doing business with a nonresident  
 283 contractor" does not include an owner or tenant of real property used  
 284 exclusively for residential purposes and consisting of three or fewer  
 285 dwelling units, in one of which the owner or tenant resides, provided  
 286 each nonresident contractor doing business with such owner or  
 287 tenant shall be required to comply with the bond requirements under  
 288 subparagraph (F) of this subdivision.

289 (B) Any person doing business with a nonresident contractor [shall  
 290 withhold payment in an amount of five per cent of the contract price  
 291 and remit such amount as a deposit to the Commissioner of Revenue  
 292 Services not later than thirty days after the completion of the  
 293 contract] and making payments to such nonresident contractor shall  
 294 deduct and withhold from such payments an amount of five per cent  
 295 of such payments, unless such nonresident contractor has furnished a  
 296 certificate of compliance as described in subparagraph (E) of this  
 297 subdivision. The amounts so required to be deducted and withheld  
 298 shall be paid over to the commissioner within six months of the first  
 299 payment to the nonresident contractor and every three months  
 300 thereafter, and each of such payments to the commissioner shall be  
 301 accompanied by a form prescribed by the commissioner. The amount  
 302 required to be deducted and withheld from the nonresident contractor,  
 303 when so deducted and withheld, shall be held to be a special fund in  
 304 trust for the state. No nonresident contractor shall have any right of  
 305 action against a person deducting and withholding under this  
 306 subdivision with respect to any moneys deducted and withheld and  
 307 paid over to the commissioner in compliance with or intended  
 308 compliance with this subdivision.

309 (C) A nonresident contractor shall request, in writing, that the  
310 Commissioner of Revenue Services audit the records of such  
311 contractor for a project for which [a deposit was made under  
312 subparagraph (B) of this subdivision] amounts were deducted and  
313 withheld from such contractor under subparagraph (B) of this  
314 subdivision. If such request is not made within three years after the  
315 date the final payment of such amounts was made to the  
316 commissioner, such contractor waives the right to request such audit  
317 and claim a refund of such amounts. The commissioner shall, after  
318 receipt of such request, conduct an audit and issue to the nonresident  
319 contractor a certificate of no tax due or a certificate of tax due from  
320 the nonresident contractor. Upon issuance of a certificate of no tax  
321 due, the commissioner shall return [such deposit] to the  
322 nonresident contractor the amounts deducted and withheld from  
323 such contractor and paid over to the commissioner. Upon issuance of  
324 a certificate of taxes due, the commissioner may [pay to the  
325 nonresident contractor out of the deposit any excess over the  
326 amount] return to the nonresident contractor the amount by  
327 which the amounts deducted and withheld and paid over to the  
328 commissioner under subparagraph (B) of this subdivision exceed  
329 the amount of taxes set forth in the certificate, together with the  
330 interest and penalties then assessed.

331 (D) When a person doing business with the nonresident contractor  
332 [deposits with] pays over to the Commissioner of Revenue Services  
333 [the amount set forth in] amounts deducted and withheld pursuant to  
334 subparagraph (B) of this subdivision, [the commissioner shall issue  
335 such person a receipt for such amount. Upon the issuance of such  
336 receipt, the person doing business with the nonresident contractor]  
337 such person shall not be liable for any claim of the nonresident  
338 contractor for such [amount] amounts or for any claim of the  
339 commissioner for any taxes of the nonresident contractor arising  
340 from the activities of the nonresident contractor on the project for  
341 which the [deposit was made] amounts were paid over. Such  
342 payment shall not relieve the person doing business with the

343 nonresident contractor of such person's liability for sales and use  
344 taxes due on purchases of tangible personal property or services  
345 from such nonresident contractor.

346 (E) When a nonresident contractor enters into a contract with the  
347 state, said contractor shall provide the Labor Department with  
348 evidence demonstrating compliance with the provisions of chapters  
349 567 and 568, the prevailing wage requirements of chapter 557 and any  
350 other provisions of the general statutes related to conditions of  
351 employment.

352 (F) Not later than one hundred twenty days after the  
353 [commencement of the contract] date the first payment to the  
354 nonresident contractor is made, or thirty days after the completion of  
355 the contract, whichever is earlier, a nonresident contractor may  
356 [petition the commissioner to] (i) furnish a guarantee bond in a sum  
357 equivalent to five per cent of the contract price, or (ii) deposit with the  
358 commissioner a cash bond in a sum equal to five per cent of the  
359 contract price, in lieu of the requirements contained in subparagraph  
360 (B) of this subdivision. The commissioner may [grant such petition]  
361 accept such bond on such terms and conditions as the commissioner  
362 may require, and upon acceptance of such bond, shall issue a  
363 certificate of compliance to the contractor. The provisions of  
364 subparagraph (C) of this subdivision shall apply to such bond, upon  
365 completion of the contract, in the same manner as such provisions  
366 apply to [the deposit] amounts paid over under subparagraph (B) of  
367 this subdivision.

368 (G) Upon the furnishing of a certificate of compliance by the  
369 nonresident contractor to the person doing business with a  
370 nonresident contractor, such person shall not be liable for any claim of  
371 the commissioner for any taxes of the nonresident contractor arising  
372 from the activities of such contractor on the project for which the bond  
373 was provided. Such certificate of compliance shall not relieve the  
374 person doing business with the nonresident contractor of such person's

375 liability for sales and use taxes due on purchases of tangible personal  
 376 property or services from such nonresident contractor.

377 (H) If any person doing business with a nonresident contractor fails  
 378 to deduct and withhold and pay over to the commissioner amounts  
 379 under subparagraph (B) of this subdivision, or fails to obtain a  
 380 certificate of compliance from the nonresident contractor pursuant to  
 381 subparagraph (G) of this subdivision, such person shall be personally  
 382 liable for payment of any taxes of the nonresident contractor arising  
 383 from the activities of such contractor on the project for which such  
 384 amounts or certificate were required.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2005	12-285b(a)
Sec. 2	July 1, 2005	4-28m(a)
Sec. 3	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-213(a)(20)
Sec. 4	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-217o
Sec. 5	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-217w(a)
Sec. 6	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-407(a)(15)
Sec. 7	<i>October 1, 2005, and applicable to contracts entered into on or after October 1, 2005</i>	12-430(7)

***Statement of Purpose:***

To encourage cigarette manufacturers' compliance with the licensing law, to encourage out-of-state companies to participate in trade shows at the convention center without being subject to state sales and use taxes, to eliminate the overlay between the credit for certain machinery and equipment and the fixed capital credit, for purposes of the controlling interest transfer tax, to allow the state to place a lien against real property of the entity in which a controlling interest was transferred, and to clarify the system of withholding for nonresident contractors in lieu of a bond.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*